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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by Institute for Human Rights, Institute for Reporters' Freedom and Safety, non- governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 January 2024]

* Issued as received, in the language of submission only.



Business Activities and Human Rights Abuses: Lessons from Danske Bank's Neglectful Breach

Institute for Human Rights would like to commend the progress made in the negotiations of States on legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

We acknowledge that business enterprises are pivotal in fostering both social and economic development, contributing significantly to the realization of the Agenda 2030 for Sustainable Development. Moreover, States, relevant UN agencies and civil society organizations shall comprehensively encourage business enterprises and financial institutions to share good practices, achievements, challenges, and lessons learned concerning integrated and gender-responsive approaches in the promotion and protection of human rights, especially addressing the SDG 1 (to End poverty in all its forms everywhere), SDG 16 (to Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), and SDG 17 (to Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development).

Considering the Universal Declaration of Human Rights and the United Nations Guiding Principles on Business and Human Rights, the instrument, in the first place, shall promote and enhance mutual legal assistance and international collaboration to prevent and alleviate human rights abuses related to business activities, especially those with a transnational scope, as well as ensure the victims' access to justice and ability to receive effective, sufficient, and prompt remedies.

Recalling the draft report on the Ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, adopted ad referendum on 27 October 2023, the definition of 'business activities' not only pertains solely to transnational corporations but also encompasses the activities of financial institutions and investment funds.

Moreover, according to the Art. 1.5 (b) of the draft report, "Business activities of a transnational character [...] undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction".

That is why, we find it is of particular importance to prevent the involvement of financial institutions and investment funds in human rights abuse and ensure an efficient practice of human rights due diligence.

From our prospective, The Danske Bank money laundering case, that arose in 2018 highlighted the vulnerability of human rights and a relative ease with which an international enterprise can compromise the efficacy of human rights due diligence, especially undermining the SDG 16, aiming to promote peaceful and inclusive societies, provide access to justice, and build effective and accountable institutions.

The Danske Bank case is probably the largest ever money-laundering case in the history that serves as an example of a neglectful breach of ethical and legal standards that still lacks a decent accountability.

This case contributes to the discussion on the responsibility of private entities and international enterprises by failing to prevent human rights abuses associated with their operations. According to the data available, a significant portion of the suspicious transactions tied to individuals and entities from countries with poor human rights records. The findings in regard to the Danske Bank testify that laundered money allowed corrupt government officials and other entities to hide ill-gotten wealth, contributing to human rights abuses in their home countries.

The lack of rigorous due diligence on Danske Bank personnel enabled the laundering of funds derived from corruption and human rights abuses. This "dirty" wealth, originating from illicit activities, imposes a societal cost, as money laundering can erode institutional accountability and diminish trust in the financial system. Additionally, the failure to implement thorough due diligence and mutual legal assistance in developed countries can yield substantial and detrimental consequences for developing nations. Instances similar to the Danske Bank case may exert unwarranted influence on the governments and institutions of developing countries, influencing policy decisions and potentially undermining democratic processes.

One of the core principles of SDG 16 is to ensure access to justice for all and within the context of business enterprises, it shall be achieved by a comprehensive legal liability, that reinforces the importance of establishing accountability mechanisms.

The investigation of the Danske Bank case revealed that money originated mainly from the Russian Federation, Ukraine and Azerbaijan. A number of NGOs and activists who were involved in the investigation and dedicated up to 10 years to the case, also exposed the infamous Caviar Diplomacy of Azerbaijan – a systematic bribing strategy, used by the officials to influence key opinions and decisions of the international organizations.

In 2022, the Danske Bank pleaded guilty to fraud on the United States of America's banks and agreed to forfeit around \$ 2 billion dollars to the United States of America. It has also claimed to pay the relevant fines to the local Danish authorities.

Yet, the societies affected in the Russian Federation, Ukraine, and Azerbaijan, from which the money was originally stolen, were left without thorough compensation. NGOs and human rights activists who played a significant role in the extensive investigation of crimes related to the Danske Bank money laundering were not remunerated for their contributions.

As in the case of Danske Bank, the corruption scheme underscored the limitations of relying solely on state enforcement. It raised the need for international cooperation and mechanisms to hold banking sector and business enterprises accountable for their actions, requiring a global approach that complements state-level efforts.

This brings into focus the need for more efficient international mechanisms and strengthened cross-country cooperation that will address the complexities involved and ensure compliance with legal and ethical standards as well as exhaustive asset recovery and remedy.

We are assured that the civil society actors, including human rights defenders, play a vital and valid role in advocating for the respect of human rights by business enterprises. They are instrumental in efforts to prevent, mitigate, and pursue effective remedies for human rights abuses linked to business activities.

Returning the money laundered in the Danske Bank scandal to the civil societies of the countries involved is essential to redress the societal cost incurred from illicit activities. This restitution can contribute to the promotion of human rights, preventing further financial crimes and fostering accountability in the affected regions. Ensuring that these funds directly benefit civil societies aligns with principles of justice, ethical standards, and the broader goal of reinforcing legal and ethical norms within the global financial system.

The Institute for Human Rights contends that a robust mechanism for repatriating stolen assets to their countries of origin is imperative, particularly when directed towards civil society representatives. This restitution not only aids in promoting and protecting human rights but also ensures that the benefits are channeled directly to those who have been adversely affected.

We strongly recommend that the governments of the United States and Denmark explore the creation of a dedicated fund for transferring and distributing the recovered funds among the civil societies of Ukraine, Russia, and Azerbaijan.

With that being said, we would like to encourage the Human Rights Council to consider the accountability of perpetrators, access to effective remedy for the victims, and timely asset recovery in cases similar to that of Danske Bank while elaborating on an international legally binding instrument.